



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/159945

PRELIMINARY RECITALS

Pursuant to a petition filed August 19, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on September 05, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly denied Petitioner’s application for replacement FS benefits when the application was made more than 10 days after Petitioner’s power outage.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Pang Thao-Xiong
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner suffered a power outage from June 30, 2014 through July 1, 2014.

3. On July 2, 2014 Petitioner made an oral report to the agency that she had suffered a power outage from June 30, 2014 through July 1, 2014.
4. On July 14, 2014 Petitioner submitted her application for replacement FS benefits due to the power outage. Petitioner submitted verification of the power outage from WE energies with her application.
5. On August 6, 2014 the agency denied Petitioner's application for replacement FS benefits because although the oral request was made within 10 days of the power outage, the written application was not submitted until 12 days after Petitioner's oral request.
6. On August 12, 2014 the Division of Hearings and Appeals received Petitioner's request for fair hearing.

DISCUSSION

Food purchased with FoodShare benefits and destroyed in a household misfortune can be replaced up to the actual amount destroyed, but not more than the monthly allotment issued for that month, whichever is less. See, *FoodShare Wisconsin Handbook* § 7.1.1.5; 7 C.F.R. § 274.6(a)(3). The household must report the loss within 10 days, and file a request for replacement FS with the Department's agent. *FoodShare Wisconsin Handbook* § 7.1.1.5. A household misfortune includes, but is not limited to, a disaster, fire or flood, or like event causing destruction of food. 7 C.F.R. § 274.6(f)(2). Finally, the agency must determine that the destruction occurred in a household misfortune or disaster, such as, but not limited to, a fire or flood. 7 C.F.R. § 274.6(f)(2).

This shall be verified through a collateral contact, documentation from a community agency including, but not limited to, the fire department or the Red Cross, or a home visit.

7 C.F.R. § 274.6(f)(2). If a person reports a household misfortune to the agency within the 10 day timeframe, the person has an additional 10 days from the date of that report to provide a signed statement attesting to the household's loss. 7 C.F.R. § 274.6(a)(4)(ii).

The issue is whether Petitioner's application for replacement FS benefits was timely. Petitioner's report of her household misfortune was timely as it was within one day of her power outage. However, Petitioner then had 10 days from that date to complete the application. A complete application includes a signed statement attesting to the household's loss. The form application used by the agency fulfills this statutory requirement. Petitioner did not complete that until 12 days after her initial report. This is not timely. Therefore she did not meet the statutory requirements, and the agency correctly denied her application for replacement FS benefits.

Petitioner argued that she applied late because she did not receive the application from the agency until July 10th. However, the agency states that they sent this application on July 2nd, which is the same date that Petitioner reported her household misfortune. Petitioner lives in Milwaukee. The application was sent from Milwaukee. This should not take more than one day to arrive at Petitioner's home. Even if it took two days to arrive at Petitioner's home, Petitioner would have ample time to complete and return the application either by mail or in person.

Petitioner testified that during that time period she was taking care of her sick mother, and not staying at her home. She would go to her home to check her mail. She did not check her mail until July 10th. I note that July 10th would have been within the 10 day window from July 2nd, however, Petitioner did not complete and submit the application until July 14th. Although, I do not have equitable authority to grant Petitioner's request for replacement FS benefits, I would not grant her request even I had that authority. She had ample time and opportunity to timely submit her application. I further find it suspect that she

testified she was staying with her mother, and also testified that she lost food in her home where there was a power outage, but where she was not staying.

CONCLUSIONS OF LAW

The agency correctly denied Petitioner's application for replacement FS benefits.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

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The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 8th day of September, 2014

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 8, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability